

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 419 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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HIERS OF VELJI D SHAH

Versus

AJITSINH JITUBHA & ORS.

Appearance:

MR AVINASH K MANKAD for Petitioners
MR YS MANKAD for Respondent No. 1
MS MAMTA VYAS for Respondent No.3 and 5
None present for Respondents no. 2, 4 and 6.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/07/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. Jadeja Balubha Govindji the grandfather of respondents no.1 to 3, filed a civil suit no. 107 of 1967 against the petitioners and some other defendants in the court of the Civil Judge (J.D.) at Mandvi, Kutch for redemption and

possession of two fields, the details of which has been given in Para no.1 of this Sp. Civil Application. On the application undisputedly and on the basis of the pleadings of the petitioner therein, the Civil Court added one more issue, issue no.14, to the issues which had been framed earlier on 8-11-1968. This addition of issue has been ordered on 18-12-1968. The issue no.14 reads as under:

"Whether the defendants no.1 and 5 have acquired occupancy rights in the suit fields on application of the Bombay Inams (Kutch Area) Abolition Act, 1958."

It is not in dispute that the aforesaid issue which has been referred to the Special Mamlatdar has been decided against the petitioners. The appeal which has been filed to the Government has also been dismissed. Hence, this Sp. Civil Application.

2. The counsel for the petitioners contended that the Civil court could not have referred the matter to the Mamlatdar. It was not in the power of the Mamlatdar to give the adjudication of the question referred to it. I do not find any substance in the contention of the counsel for the petitioner. The issue which has been referred to the Special Mamlatdar by the Civil Court has been framed on the application of the petitioners and the same has been referred to the said authority at their insistence. The petitioners have not raised any objection before the Special Mamlatdar or the appellate authority. In view of this fact, the petitioners are estopped from raising this objection before this Court. The petitioners themselves have called for the decision, and when this decision has gone against them, they started to raise the question of jurisdiction, both with the Civil Court and with the Special Mamlatdar. I have considered the matter on merits also and I do not find any illegality in the order which has been passed by the authorities below. The only issue has been decided and the suit is still pending. It is true that the decision given on issue no.14 by the Special Mamlatdar and the appellate authority is final, but that does not mean that it is not questionable when the matters come before this court in the appeal from the original civil side. It is only the interlocutory order which no way decides the finality of the rights of the parties. The appropriate course would have been for the petitioners to have waited for the final decision of the suit and in case, if it had gone against them, then the matter could have been taken up before this Court by way of the appeal. Having taken

into consideration the aforesaid facts, I do not consider it to express any opinion on the merits of the order, and it shall be open to the petitioners, if ultimately the civil suit is decided against them, to raise this point when the matter is brought before this court by way of the appeal. In the result, this Special Civil Application fails, and the same is dismissed. Rule discharged. Ad-interim relief granted by this Court stands vacated.
